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ABSTRACT

This paper examines how key provisions of the Americans with Disabilities Act affect the operations of academic libraries. First, the paper summarizes the provisions of the ADA's five titles that deal with: (1) employment of people with disabilities; (2) accessibility of public buildings; (3) modifications to existing and new construction; (4) telecommunications; and (5) miscellaneous provisions. Next, the paper examines implications for academic libraries. A section on accommodations for persons with disabilities stresses the tension between "reasonable accommodation" and "undue hardship" and identifies technological and structural solutions to accessibility problems. Discussion of the ADA and employment of librarians with disabilities focuses on changes in statements of job requirements. Cost issues of implementing the ADA are briefly considered. (Contains 20 references.) (DB)

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Americans With Disabilities Acts: Implications for Academic Libraries

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Americans With Disabilities Acts: Implications for Academic Libraries

In recent years, a growing number of students with disabilities are found in colleges and universities across the nation. This phenomenon is closely related to earlier legislative acts, such as The Individuals with Disabilities Education Act of 1990, for school-age disabled children's right to education. This right to education has been further extended to accommodations required for the disabled adults when the most sweeping civil rights legislation in the United States since the Civil Rights Act of 1964 was signed into law on July 26, 1990: the Americans with Disabilities Act (ADA) (Hardman, Drew, & Egan, 1996). Accommodations for the disabled in almost all aspects of life are required by the ADA and higher education institutions must also provide accommodations for students with disabilities. As such, an increasing number of students with disabilities have been found on college campuses. Their increasing usage of academic libraries can thus be expected. Issues involving the employment of disabled librarians and staff are also expected. Reasonable accommodations to help the disabled patrons use the academic libraries and to allow disabled library staff perform their duties have come under scrutiny.

While the extent of disabilities ranges from almost unnoticeably mild to extremely profound, the disabled have been historically isolated and segregated

and face many types of discrimination which were outlawed years ago against other groups (ADA, Introduction Sec. 2, Findings and Purpose).

The barriers faced by the disabled in academic libraries are sometimes enormous. If academic libraries are to truly uphold the ideal of providing knowledge to everyone including the disabled and to comply with the requirements of the ADA in hiring the disabled, it is crucial to understand the major provisions of the ADA and its effect upon the operations of academic libraries. Therefore, it is the purpose of this paper to examine the key provisions of the ADA and their implications for the operations of academic libraries.

The Americans with Disabilities Act of 1990

The Americans With Disabilities Act was signed into law in 1990 by President George Bush. It was a source of anger to many of his more conservative supporters who thought the law was both too broad in scope and too intrusive (Kopelman, 1996). Other groups thought that the law did not go nearly far enough and have lobbied to have its reach expanded. In many ways, the full impact of the ADA will not be known for years as the various legal limits of the law will take years to wind their way through the courts (Goldfein & Hanssens, 1996). It is the purpose of this section to examine the various parts of the ADA so that the complexity of the ADA may be grasped.

The Key Provisions of the ADA

The ADA is a long document. A one and one-half spaced copy takes up more than 88 pages in a 12-point type. The ADA is also a complex document in that it is arranged in five parts with multiple sub-headings and uses many legal and technical terms to describe its requirements. Despite the length and complexity of the document, the ADA's goal is simply "To establish a clear and comprehensive prohibition of discrimination on the basis of disability (ADA, Short Title. Section 2b1). The ADA seems to have generated a great deal of discussion both positive and negative in academia (Cutter, 1996). People seem to have an intuitive understanding that good laws are simple to understand, obvious in nature and applicable universally regardless of culture. For example; probably at least seven of the "Ten Commandments" would be understood as simple, obvious and universal laws by every person on this planet. The Ten Commandments can be written in less than one page. The ADA is 88 pages long. The ADA's very complexity marks it as a controversial law for many people.

A total of five titles are contained in the ADA. The combined provisions of these five titles have set an ambitious goal of accommodating the disabled in almost all aspects of life. Academic libraries are not exempted from this law and are facing challenges as great as other agencies. Some of the pertinent details of each title are explored and discussed as follows.

Title I. Title One of the ADA deals with the employment of disabled persons. The title, as are all the other titles, is divided into sections. In Title One, the sections are listed as: Section 101 Definitions, Section 102 Discrimination, Section 103 Defenses, Section 104 Illegal use of Drugs and Alcohol, Section 105 Posting Notices, Section 106 Regulations, Section 107 Enforcement and Section 108 Effective date.

It is in Title I that the ADA sets forth the range and scope of accommodation that are considered "reasonable" for the employment of disabled workers. It also attempts to balance the right of the employee to accommodation with rights of the employer. The easiest way to understand how this balancing act works in Title One is to see the way that the law defines "reasonable accommodation" for the employee and "undue hardship" upon the employer in Sections 101.8, 101.9 and 108.10

> (8) Qualified individual with a disability.--
> The term "qualified individual with a disability" means an individual with a disability who, with or without reasonable accommodation, can perform the essential functions of the employment position that such individual holds or desires. For the purposes of this title, consideration shall be given to the employer's judgment as to what functions of a job are essential, and if an employer has prepared a written description before advertising or interviewing applicants for the job, this description shall be considered evidence of the essential functions of the job.
>
> (9) Reasonable accommodation.--
> The term "reasonable accommodation" may include-- (A) making existing facilities used by employees readily accessible to and usable by individuals with disabilities; and (B) job restructuring, part-time or

modified work schedules, reassignment to a vacant position, acquisition or modification of equipment or devices, appropriate adjustment or modifications of examinations, training materials or policies, the provision of qualified readers or interpreters, and other similar accommodations for individuals with disabilities.

Sec. 108 (10) Undue hardship.--
(A) In general.--The term "undue hardship" means an action requiring significant difficulty or expense, when considered in light of the factors set forth in subparagraph (B).
(B) Factors to be considered.--In determining whether an accommodation would impose an undue hardship on a covered entity, factors to be considered include-- (i) the nature and cost of the accommodation needed under this Act; (ii) the overall financial resources of the facility or facilities involved in the provision of the reasonable accommodation; the number of persons employed at such facility; the effect on expenses and resources, or the impact otherwise of such accommodation upon the operation of the facility; (iii) the overall financial resources of the covered entity; the overall size of the business of a covered entity with respect to the number of its employees; the number, type, and location of its facilities; and (iv) the type of operation or operations of the covered entity, including the composition, structure, and functions of the work force of such entity; the geographic separateness, administrative, or fiscal relationship of the facility or facilities in question to the covered entity.

The problem with these provisions is that there is an apparently large gray area between where "reasonable accommodation" stops and "undue hardship" begins (Cutter, 1996).

Title II. Title II deals with accessibility for the disabled and contains the actual clause requiring that public buildings be made accessible to the disabled.

Sec. 227. ALTERATIONS OF EXISTING FACILITIES
(a) General Rule.- - With respect to the alterations of an existing facility or parts thereof used in the provision of designated public transportation services that could effect the usability of the facility or part thereof, it shall be considered discrimination, for the purposes of section 202 of this act

> and section 504 of the Rehabilitation Act of 1973 929 794), for a public entity to fail to make such alterations (or to ensure that such alterations are made.) in a manner that, to the maximum extent feasible. the altered portions of the facility are readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs, upon the completion of such alterations.

To assure accessibility is achieved, a "self evaluation" (Natale, 1991) was to be performed by all public entities and a time table for implementing changes established. Where the self evaluation program revealed problems, a plan was to be implemented to remedy the problems by January 26, 1995. An example of the type of form used for the self evaluation at all Illinois Public Libraries can be found in Appendix A.

Title III. Title III spells out the specific legislation regarding the nature of modifications to existing and new construction. The heart of these new rules are contained in Section 303 where it is stated that:

> SEC. 303. NEW CONSTRUCTION AND ALTERATIONS IN PUBLIC ACCOMMODATION AND COMMERCIAL FACILITIES.
> (a) Application of the Term - - Except as provided in subsection (b), as applied to public accommodation and commercial facilities, discrimination for purposes of section 302(a) includes
>
> (1) a failure to design and construct facilities for first occupancy later than 30 months after the date of the enactment of this Act that are readily accessible to and usable by individuals with disabilities, except where an entity can demonstrate that it is structurally impractical to meet the requirements ....
>
> (2) with respect to a facility or part thereof that is altered by, on behalf or, or for the use of an establishment in a manner that affects or could affect the usability of the facility or part thereof, a failure to make alterations in such a manner that, to the maximum extent feasible, the

> altered portions of the facility are readily accessible to the and usable by individuals with disabilities, including individuals who use wheelchairs. Where the entity is undertaking an alteration that affects or could affect usability of or access to an area of the facility containing a primary function, the entity shall also make the alterations in such a manner that, to the maximum extent feasible, the path of travel to the altered area and the bathrooms, telephones, and drinking fountains serving the altered area, are readily accessible to and usable by individuals with disabilities....

It is noteworthy that there are no specific regulations listed as to what the alterations are to be. That is because the actual regulations are contained under Title V of the Rehabilitation Act of 1973 (29 U.S.C. 790 et. seq.).

Title IV. Title IV of the ADA deals specifically with telecommunications. This title deals primarily with such items as the closed captioning of public announcements on television and video communications and the requirements necessary for the hearing impaired. The most important clause is an amendment to Title II of the Communications Act of 1934 (47 U.S.C. 201 et. seq.) The amendment prohibits telephone carriers from charging extra for a Telecommunication Device for the Deaf (TDD) instead of a normal telephone.

Title V. This title deals with various miscellaneous provisions of the ADA not dealt with in the other titles. The major section deals with describing which parts of previous legislation are to be set aside and with are to still be enforced (Title V sec. 501). Other sections discuss specific exemptions from the ADA,

specifically transvestites are not considered disabled in sec. 508 and the Congress exempted itself from coverage in sec. 509[1].

Implications for the Operations of Academic Libraries

Having reviewed the key provisions of the ADA, this paper will now focus on some major implications that have arisen in the implementation of the ADA as it applies to academic libraries. This section will examine some specific issues that must be faced if an academic library is to be in compliance with the ADA. The issues discussed include accommodations for disabled library patrons, discrimination in hiring individuals with disabilities for academic libraries, and the cost of compliance with the ADA.

Accommodations for Disabled Patrons

A number of the accommodations required by the ADA apply to the operations of academic libraries and some issues are raised in complying with these requirements. A key issue to the implementation of the ADA in academic libraries is the tension between the "reasonable accommodation" and the "undue hardship" clauses found in Title I. These two provisions imply that the parties involved, the public entity and the disabled person, are to enter into a good faith agreement with each other. The agreement is simple. Public entities will work

[1] In 1995 congress voted, as part of the Contract with America legislation to remove all legal exemptions for congress under the law. So from June 1995 Congress is no longer exempt from the ADA

towards fuller access and integration of their facilities The disabled will make reasonable demands for accommodation while realizing that there may still be areas that are inaccessible to them. The ADA is apparently predicated upon the concept of bargaining in good faith by both parties.

With regard to academic libraries, the range of accommodations offered to the disabled varies greatly from one institution to the next. Some libraries, due to fiscal restraints and the limitations of older buildings can do very little to increase and improve access. Others can and have done a great deal. One academic library that has done a great deal in providing access to the disabled is at the University of Alabama.

According to Mendle (1995), the University of Alabama (UA) engaged in an extensive effort to make its library system accessible to the disabled. As such, it is a potentially good model for other academic libraries to use when designing their facilities to be accessible. Some of the notable points of interest in the UA accessibility program are a telecommunication device to answer telephone reference questions. Raised buttons on elevator controls that make it easier for those with poor motor control to use elevators. Braille signs and stack guides were created to allow the visually impaired to independently access the stacks area. However, the center piece of the UA's accommodation efforts was the creation of an "adaptive technology laboratory" funded by an alumni donation and

comprised of two specifically configured computer work stations especially for use by the visually and mobility impaired. The first computer is intended for patrons who have low vision. It allows those patrons to have access to not only the on-line catalog but programs that enlarge print and graphics. The machine is connected to both a large VGA monitor, a Closed Circuit Display (CCD) camera and a video/TV monitor. The system could also print to either a laser printer or a Telesensory Everest Braille Embosser. The second machine is for patrons who are completely blind and is equipped with not only a VGA monitor but a VERT speech recognition system and OsCar optical recognition systems, Using this computer, a patron can scan an image into the system using OsCar and then have the image translated into speech by VERT. In effect, the computer reads the book aloud to the patron. Both machines are connected to the library catalog ás well as all other on-line resources that the university has to offer.

Obviously, not all academic libraries can provide such high-tech solutions to the problem of increasing access for the disabled. But, there are many things that must legally be done, taken together, to form a legal floor of minimum accommodations. A complete list of the mandatory accommodations required by the ADA proved difficult to locate. The accommodations and rights located for discussion in this paper are not, and should not be taken as, exhaustive.

First, hallways or corridors should have a minimum of 80 inches (six feet eight inches) of overhead clearance (Smith & Luckasson, 1995). This is considered the minimum requirement for normal use by the visually impaired who need to be able to ambulate without fear of striking overhead fixtures that could not found with a cane. Where this ceiling height is not possible, then a soft barrier must be provided to warn the person of an impending object.

The ADA requires that restroom facilities be accessible to the disabled, including those in wheelchairs (Natale, 1992). Public restrooms modifications for the ADA compliance are perhaps the most evident area of compliance in public buildings such as academic libraries. It also does not take much thought for the non-disabled person to see the humanity in these changes. The mandated alterations to public restrooms include rearranging restroom stall partitions to make them wide enough for wheel chair access. Installing grab bars in toilet stalls to make the transfer from a wheelchair to a toilet easier is also required. Lowering lavatories and changing the hardware to make them usable by the disabled, and insulating hot water pipes under lavatories to prevent the disabled from being burned are also important accommodations. Installing a full length mirror that will allow wheelchair users to perform such basic activities as combing their hair neither cost much nor cause inconveniences to the non-disabled. Dispensers for soap, paper towels and toilet tissue are to be positioned

so that they are accessible by the disabled. Some of these accommodations are expensive to retrofit but are also clearly necessary.

Parking reserved for the disabled is needed for at least two reasons. First, people who use wheelchairs must have enough space on the side of their vehicle to operate a mechanical lift. Other disabled people may have less severe ambulatory problems but need to be able to park near a door in order to safely access a public building. Concomitant with accessible parking, curb cuts and ramps into entrances that are above ground level are required to ease access into public places. Public telephones must be installed at a level accessible to wheelchair-bound patrons. If a water fountain is unable to be made accessible, then a paper cup dispenser must be placed in an accessible location. If architecturally possible, doors should be widened to at least 36 inches and fitted with offset hinges to allow the door to open wider if needed. Hardware such as door knobs, handles, or latches must be able to be grasped by disabled patrons including wheelchair users. Elevators in academic libraries should have raised buttons facilitating use by those with poor fine muscle control or the visually impaired. A major safety accommodation is to have flashing alarm lights to warn the hearing impaired of building emergencies. These types of accommodations, in general, do not pose "undue hardship" for academic libraries.

Other commonly seen accommodations that might affect academic libraries are: repositioning shelves and rearranging the tables, chairs, vending machines, display racks and other furniture. Repositioning shelves, often requires more floor space and may or may not be possible in any given building. Other common accommodations at academic libraries include having accessible terminals to on-line catalogs and reference and circulation desks placed in accessible locations and at a height of between 27 and 30 inches.

Aisle width in stacks areas is a potential problem for mobility impaired patrons but not as great a problem as stack height. A normal library stack height is about 84 inches or seven feet. A wheel chair bound patron can probably neither reach that high or read call numbers from so far away. Yet, to bring the entire stacks down to the 40-48 inch level that could be reached from a seated positions obviously impossible in that it would require doubling the floor space of the library. Because of these facts wheelchair bound patrons will probably always need assistance in stack areas.

Few libraries are as well equipped as UA. Many smaller universities such as the one that this author works at are housed in old buildings and probably cannot be made completely accessible[2]. Indeed, it is a somewhat problematic

[2] The Murrey and Leonie Guggenheim Memorial Library is housed in what use to be the Summer "cottage" of Murry and Leonie Guggenheim who were wealthy industrialist at the turn of the century. The building is a 7500-10,000 square foot classical revival mansion built in circa. 1912.

question as to whether any public building will ever be completely accessible to all disabled patrons. Even libraries at institutions like the UA that have put considerable effort and money into the accommodation effort have found that not all access problems can be solved by retrofitting a computer and building ramps. For example, the use of motorized wheelchairs which are larger than hand propelled ones can cause problems in that these devices are sometimes so wide that they cannot be used in ADA compatible doorways or stacks areas. Other similar examples will no doubt come to mind but all of the access problems encountered by the disabled in academic libraries revolve around receiving service.

The biggest access problem that academic libraries face in dealing with the disabled remains personal service. As the UA found out, all the whiz bang technology available did not significantly reduce the need of disabled patrons to deal, face to face, with a librarian. The fact that technology does not always solve access problems should not surprise anyone, especially librarians. Technology continues to be touted as the great savior of libraries in the future (Cornish, 1985). It is interesting that nowhere in the predictions of the technological "library of the future" does one ever find reference to the disabled.

It is a state architectural landmark and is complete with a resident ghost. It is very difficult for a wheelchair bound patron to navigate due to turn of the century floor plan.

Technology cannot solve the problems that disabled patrons face in an academic library much more than it can solve the problems of a non-disabled patron. What the disabled need from the library is not primarily a high tech solution but to be treated with the dignity that they posse as human beings. The ADA can offer guidelines and the threat of punitive damage but only an encounter with another human, one to one, in the ebb and flow of every day life can allow us as humans to respect each other. This author believes that a law cannot make people respect each other because laws, by definition, are negative in nature. That is, laws, by threat of force or punishment, may keep people from doing the wrong thing but laws cannot make people do what is right for the right reason. Librarians, if they are to live up to the nineteenth century platitudes that the library movement was founded upon (and still claims to believe) must simply do what they know to be right and serve the disabled in a responsible and diligent manner. In the end, the problem may not be within the ADA but within librarians.

The positive effects that the ADA will have upon the non-disabled patron should also not be ignored. In many cases wider doors and hallways, better laid out display areas and restrooms can make academic libraries less threatening and more user friendly to everyone. More importantly, the disabled often live lives of quiet heroism that go almost completely unnoticed by the public at large. By giving access to public buildings, including academic libraries, to the disabled

librarians allow the rest of society to see what it really means to struggle with life and to succeed. Today there are thousands of disabled people with stories as griping as that Helen Keller's but those stories are never hear, or known because society does not value heroism unless the heroes are beautiful. The major benefit of making academic libraries accessible to the disabled is that it allows the non-disabled a chance they would otherwise not have; namely, to become better rounded humans in a moral sense. Is that not what libraries are all about?

ADA and Disabled Librarians

One aspect of UA's accessibility plan that was not mentioned has nothing to do with patrons but library employees. The ADA applies not only to users but to employees of a public entity. Libraries need to be accessible to not only disabled patrons but disabled librarians. The two do not always have the same needs. The ADA requires that the disabled not be discriminated against and that reasonable accommodation be made to allow them to do their job. "Separate but equal" accommodations or "equivalent" services are not the goal but access to the mainstream of society. If a library does not think that a disabled person can do a certain job, then the job description should be written so that only those people who can actually do the work apply (ADA Title I sec. 102). If a disabled person can reasonably do the work, then they cannot be denied the job because of their disability. These regulations are listed in Title One, Sec. 101. 9a through 9b and

the complete Sec. 102 and are fairly specific in nature. Academic libraries cannot refuse to hire the disabled unless the applicants show inability to do the job or lack the qualifications required for the job. If a disabled person can physically do the job, then work areas such as the back of the circulation desk, office and storage areas, hallways, employee break and restrooms, and computer terminals used for work related activities be accessible. All of these areas need to be thought out before a building is renovated or new construction is begun or the requirements for a position are advertised. Unlike the changes in building construction the ADA list specific regulations on what can and cannot be asked for by potential employers to disabled job applicants.

One result of the ADA is the change in the way that requirements for a job have been revised. An example may be drawn from a currently open position for a Professional Librarian at the Perry-Castenada Library at the University of Texas at Austin. In addition to the academic and work experience requirements, the following abilities are also listed as necessary:

* PHYSICAL TASKS:
  Continuous: sitting, reading and viewing.
  Frequent: standing, walking, use of manual dexterity, extending of arms, talking and listening.
  Occasional: bending, stretching, twisting of upper body and light lifting and moving.

* ENVIRONMENTAL DEMANDS:
  Continuous: indoor activity and exposure to fluorescent light.

Occasional: exposure to large crowds.[3]

Could a mobility impaired person apply for this position even if he/she has the required academic and work experience qualifications? Could this type of job descriptions be used as an avenue to screen out the otherwise qualified disabled applicants? Or is it reasonable for the institutions or corporations to specify the physical activities required of their employees to accomplish their duties? This is again the issue of where "reasonable accommodations" stop and where "undue hardship" begins.

The Cost of Implementing the ADA

If academic libraries are going to be able to implement the provisions of ADA then they must find the funds to set up the special services needed by disabled. These funds must either be new moneys acquired from budget increases, grants or increased user fees, or old money that has been reclaimed by streamlining existing operations or cutbacks in other areas. The cost of modifying buildings and purchasing adaptive devices for use by the disabled can be quite large, though is not always so. A relevant question is what library materials are not going to be purchased for the general collection because of the accommodation given to the disabled? It is a question that many libraries have had to, and will continue to have to ask. The University of Alabama's high tech

[3] UT Austin Job #96-11-25-05-0080

Adaptive Technology Laboratory was made possible through a grant. Many libraries simply do not have the money to implement such programs. Again the vague nature of the terms "reasonable accommodation" and "undue hardship" comes into play. Academic libraries, as are other institutions, are left with the often hard choice of deciding between the cost of a lawsuit and over compliance.

New construction is less of an issue under the ADA than modifying old ones. No estimates of the additional construction cost of building a new academic library nor specific information on the cost of new library construction could be found under the ADA. Other similar agencies have done those estimate and found that compliance would add only between three and five percent to new building construction. While five percent of a new library can still be a lot of money it is not an unmanageable figure considering the gains in access that would be granted to the disabled.

Conclusion

The Americans with Disabilities Act was a landmark piece of legislation. Libraries because they are specifically defined as a "public entities" are given no choice but to comply. The ADA is a long and complex law that has generated a tremendous amount of attention and been, at times difficult to implement. Yet, it seems clear that if this society is to ever be accessible to those with less than average physical abilities, we, as a society, must have some form of legislation in

place to "encourage" people to do what they know is right. At this point, the ADA is that legislation and librarians should strive to ensure that the law is effectively implemented in their libraries.

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